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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: SAN FRANCISCO, CALIFORNIA

Date DEC 23 2004

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Tonga who was found to be inadmissible to the United States under § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure a benefit under the Act by fraud or willful misrepresentation. The applicant's U.S. citizen brother filed a Petition for Alien Relative, which was approved. The applicant has two U.S. citizen children and seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States. The district director concluded that the applicant was not eligible for the waiver, as the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208, 110 Stat. 3009 (1996), amended the list of qualifying relatives such that U.S. citizen children were no longer considered qualifying relatives for the purpose of the § 212(i) waiver.

Counsel submitted a timely Form I-290B on which she wrote that a brief or other evidence would be submitted to the AAO within 30 days. As of this date, the AAO has received no additional evidence; thus the record is complete. On appeal, counsel asserts that because the applicant's case was filed with the Service, now Citizenship and Immigration Services (CIS), prior to the enactment of IIRIRA, CIS erred in applying § 212(i) waiver standards developed after IIRIRA was enacted. Counsel's assertion is unpersuasive.

In the Board of Immigration Appeals (BIA) case, *Matter of Cervantes*, 22 I&N Dec. 560, 563-65 (BIA 1999), the BIA held that:

[T]he enactment of new statutory rules of eligibility for discretionary forms of relief acts to withdraw the [Attorney General's, now the Secretary of Homeland Security [Secretary]] jurisdiction to grant such relief in pending cases to aliens who do not qualify under those new rules.

....

[W]e . . . find that the new provisions in section 212(i) must be applied to pending cases.

Based on the above holding, it is clear that the district director correctly applied current § 212(i) standards to the applicant's case.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a

United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant admitted to having made a willful misrepresentation of a material fact to the effect that she had performed seasonal agricultural work, based upon which she applied for legalization. A § 212(i) waiver of the bar to admission resulting from violation of § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The record does not contain information that the applicant has a U.S. citizen spouse or parent; thus, there is no qualifying relative for the purposes of this waiver. The applicant is therefore statutorily ineligible for the § 212(i) waiver of inadmissibility. In proceedings for application for waiver of grounds of inadmissibility under § 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.